IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 28329 of 2006(V)

PETITIONER:

KSRTC REPRESENTED BY ITS
MANAGING DIRECTOR, TRANSPORT BHAVAN,
EAST FORT, TRIVANDRUM.

BY ADV. SRI.T.RAVIKUMAR, SC, KSRTC
SHRI.JOHNSON P.JOHN, SC, KSRTC

RESPONDENTS:

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1. THE KERALA STATE TRANSPORT EMPLOYEES
CO-OPERATIVE SOCIETIES LTD., REG.NO. 4206,
ALAPPUZHA REP. BY ITS SECRETARY.

2. THE REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), TRIVANDRUM.

3. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), ERNAKULAM.

BY ADV. SRI.N.UNNIKRISHNAN, SC FOR R1
GOVT.PLEADER SRI.P.K.RAVIKRISHNAN FOR R2, R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.C.NO.28329/06

PETITIONER'S EXHIBITS

EXT.P1 TRUE COPY OF THE PETITION SUBMITTED ALONG WITH THE AFFIDAVIT DTD. 29-09-2006.

EXT.P2 TRUE COPY OF THE REVISION PETITION DD. 1-11-06

RESPONDENT'S EXHIBITS

EXT.R1(A) TRUE COPY OF JUDGMENT DTD. 5-4-02 IN O.P.NO.857/02

EXT.R1(B) TRUE COPY OF JUDGMENT DTD. 7-9-05 IN W.P.C.NO.1284/05

EXT.R1(C) TRUE COPY OF JUDGMENT DD. 2-2-06 IN W.A.NO.2156/05

EXT.R1(D) TRUE COPY OF AFFIDAVIT AND PETITION DTD. 29-9-06 IN ARC NO.288/03

EXT.R1(E) TRUE COPY OF DRAFT ISSUE DTD. 29-9-06 IN ARC NO.288/03

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

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W.P.(c).No. 28329 OF 2006

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Dated this the 25th day of September , 2007

JUDGMENT

Petitioner has approached this court seeking the following prayers:

> i. to issue a writ of mandamus or any other writ, order or direction directing the 1st respondent to transfer ARC No.288 of 2003 pending before the 3rd respondent to be heard either by the 2nd respondent or by any other Joint Registrar.
>
> ii. to direct the 3rd respondent to call for the records requested as per Ext.P1 for a proper adjudication of the claim.

Case of the petitioner in brief is as follows:

First respondent filed ARC No.288 of 2003 before the 3rd respondent under Section 69 of the Co-operative Societies Act. It was taken on file as ARC No.71 of 2003. It was earlier filed before the 2nd respondent and later on it was transferred to the third respondent (Joint Registrar of Co-operative Societies (General), Ernakulam). Petitioner filed Ext.P1 calling for certain records

which the society is bound to keep under Rule 29 of the Co-operative Societies Rule. It is the case of the petitioner that no orders have been passed on the same. Petitioner filed preliminary objection relating to jurisdiction. That was rejected by the third respondent. Copy was refused saying that there is no provision. Petitioner also raised draft issues and it is the case of the petitioner that matter is posted for evidence on 15/11/2006. It is the case of the petitioner that there is bias having regard to the conduct of the third respondent.

2. Counter affidavit is filed by the first respondent producing Exts.R1 (A) to Ra(E). Ext.R1(A) is the judgment of this court relied on by the first respondent to show that this court had taken the view that if the first respondent suffered any damage as a result of the omission of the petitioner to pay the amount in time as provided under Section 37 of the Act, they will be free to work out their remedies either before the civil court or before the arbitrator under the Kerala Co-operative Societies Act. Thereafter the issue relating to jurisdiction being decided against the petitioner, the matter was challenged and it resulted in the dismissal of the writ petition filed as evident from Ext.R1(B). Even though appeal was filed, Ext.R1(C) would show that it came to be

withdrawn with liberty to the petitioner to challenge the award on all grounds inclusive of the grounds which have been raised in the writ appeal before the Appellate Authority.

3. I heard learned counsel for the parties. Learned counsel for the petitioner would reiterate the contentions. He submits that there is bias as evident from the following circumstances. Even though draft issues were raised, they have been rejected by the second respondent. No orders are passed on Ext.P1 application seeking production of documents. The copy of the order rejecting the plea of the petitioner on the question of jurisdiction was not given to the petitioner. Petitioner filed Ext.P2 before the Registrar seeking transfer.

4. Learned counsel for the first respondent reiterates the contentions in the counter affidavit. He would submit that the proceedings before the third respondent would be more convenient to all the parties and no ground is made out to transfer the proceedings to another Joint Registrar.

5. Learned Government Pleader on instructions submits that in fact issues have not been framed. The case of the first respondent is that order has not been passed on the prayer in Ext.P1. I would not think that petitioner has made out a case of

bias as such. There is no allegation of any pecuniary or personal bias. I would not think that the case of bias on the basis of the view of the officer concerned is also made out. Even proceeding that an order passed by the officer is erroneous, that by itself cannot mean that the officer is biased.

Having regard to all the facts, the writ petition is disposed of as follows:

I reject the prayer of the petitioner for directing the first respondent to transfer ARC No.288 of 2003 pending before the third respondent to be heard either by the second respondent or by any other Joint Registrar. If no order has been passed on Ext.P1, a decision will be taken on Ext.P1 before the evidence is allowed to be adduced. In view of the submission of the learned Government Pleader that issues have not been made so far, the third respondent will proceed to frame issues as contemplated in law.

(K.M.JOSEPH, JUDGE)

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